

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2241 OF 2004

Madanlal Taparia and another ... Petitioners
versus

The Bank of Rajasthan Ltd.

and another ... Respondents

...

Mr. Shreeram Shirsat, i/by Mr. Raja Thakare and
Mr. A.M. Chimalkar, for the Petitioners.

Mr. K.V. Saste, A.P.P., for Respondent No. 2.

Mr. Kamaldeep i/by Paras Kuhad & Associates, for
Respondent No. 1.

...

CORAM : A.M.KHANWILKAR, J.

14th December 2004

P.C.:

01. Heard Counsel for the parties. Rule.
Rule made returnable forthwith by consent. Mr.
Kamaldeep waives notice for Respondent No. 1.
Mr. Saste, A.P.P., waives for Respondent No.2.
As short question is involved, petition is taken

up forthwith for final disposal by consent.

02. Respondent No. 1 laid criminal action in the Court of Metropolitan Magistrate, 43rd Court at Ballard Pier, Mumbai, being C.C. No. 2323/S/1999 against 10 accused persons. The Petitioners are named as accused Nos. 7 and 8 respectively. The complaint is in respect of cheque purportedly dated 30th June 1999 and presented on 1st July 1999, which was eventually returned as dishonoured. After issuing statutory notice, the abovenumbered complaint has been instituted. In the complaint, it is averred that accused Nos. 2 to 9 are the Directors and accused No. 10 is the Vice-President of accused No. 1. Undoubtedly, when the accused is a Company, the officers, who are in charge of the Company at the time when the offence is allegedly committed alone would be responsible for the criminal action. In the present case, Petitioner No. 1 has resigned as Director on 30th May 1996 and Petitioner No. 2 on 16th November 1996. The change has been reported to the Registrar and duly notified in the Register as reflected from Form 32. In other words, the grievance of the

Petitioners before this Court is that they were not the Directors of the accused No.1 Company at the relevant time nor in charge of the affairs of the Company. Moreover, no case is made out in the complaint that the Petitioners were in charge of the affairs of the Accused Company and continued as Directors at the relevant time when the cheque was presented or dishonoured and statutory notice was sent and not complied with. On this basis, the Petitioners have approached this Court for quashing of the criminal action qua them.

03. To resist the present petition, Counsel for the Respondent No. 1 has placed reliance on the decision of the Andhra Pradesh High Court reported in 1999(3) ALL MR (JOURNAL) 5 in the case of Bharat Kumar Modi and others v. Pennar Paterson Securities Ltd., Hyderabad and others; as well as of our High Court reported in A.I.R. 1983 Bombay 1 in the case of Om Prakash Berlia and another v. Unit Trust of India and others. Counsel for the Respondent No. 1 has also contended that the complaint will have to be read as a whole and, if so read, there is averment in

the complaint that the Petitioners were Directors and whether they continued to be Directors at the relevant time is a matter of evidence. On this basis, it is contended that this petition deserves to be dismissed. To buttress this contention, reliance is placed on the decision of the Apex Court reported (2002) 8 S.C.C. 236 in the case of Raj Lakshmi Mills v. Shakti Bhakoo.

04. On considering the rival submissions and upon fair reading of the complaint, I have no hesitation in taking the view that criminal action instituted against the Petitioners cannot be allowed to proceed. Indeed, the complainant has asserted that accused Nos. 2 to 9 are the Directors of accused No. 1 Company, but to constitute offence and make a person liable for prosecution in relation to the offence committed by the Company, it has to be asserted how that person was in charge of the affairs of and responsible to the company. Besides, the offence has been committed with the consent or connivance of or is attributable to any neglect on his part as Director. This is the requirement of section 141 of the Act. A priori, merely being a

Director of a company by itself does not make a person liable for being prosecuted in relation to the offence committed by the company. No provision either in the Companies Act or the Negotiable Instruments Act is brought to my notice which would permit the Court to assume that every Director is in charge of the day to day affairs of the company or would have had consented or connived in the commission of the offence or that he was negligent on his part as Director, which was the cause for the offence. That has to be clearly asserted by providing material facts therefor. In the present case, the averment in the complaint, at best, is that the Petitioners were Directors of the Company and were, therefore, concerned with the day to day affairs of the Company. That is not enough. It is not the case of the complainant that the Petitioners were the signatories to the cheque. Whereas, according to them, as alleged in para 11 of the complaint, the accused No. 10, the Vice President of the Accused Company, was the authorised signatory of the cheques. As mentioned earlier, merely being a Director of the Company, there can be no presumption that the

person is liable in relation to the offence committed by the Company as such. Something more is required to be alleged and also established. That is lacking in the present case.

05. Moreover, in the present case, the offence has taken place in the year 1999 when the cheque was presented on 1st July 1999, which was, in turn, dishonoured, consequent to which statutory notice was issued on 12th July 1999. It is well-settled that it is only when the demand in the statutory notice is not complied with, that the cause of action to institute criminal action would arise. In the present case, that has happened in July 1999 when the Petitioners were not the Directors of the accused Company. There is no clear averment in the complaint that at the relevant time, the Petitioners, accused Nos. 7 and 8, continued to be the Directors or in charge of the affairs of the company. On the contrary, on fair reading of para 11 of the complaint, it is seen that the complainant was aware that the Petitioners, accused Nos. 7 and 8, were no longer Directors of the accused Company at the relevant time.

Inasmuch as, a very guarded assertion is made that - "The Accused Nos. 7 to 9 were Directors of accused No. 1 at the relevant time when the said cheque was issued". In other words, the complainant had kept the distinction in mind so far as the present Petitioners are concerned, by specifically asserting that they were the Directors "when the cheque in question was issued" and not when it was presented and returned as dishonoured. This is so, because in the immediately following sentence, it is generally alleged that "accused Nos. 2 to 10 at the time the said cheques were forwarded to the complainant and dishonoured as stated above were in charge of and responsible for the conduct of business of the accused No. 1 Company and the said cheque has been dishonoured to their knowledge". This is relevant because the post-dated cheque was forwarded in the year 1996 (as mentioned in para 6 of the complaint), when the Petitioners were Directors. However, merely because the Petitioners were Directors when the post-dated cheque was forwarded, which eventually was dishonoured upon presentation in July 1999, by itself, will not make them liable for being

prosecuted for the alleged offence committed by the Company. To make them liable, they not only ought to have continued to be the Directors when the cause of action had arisen in July 1999, but also be responsible for the day to day affairs of the accused Company at the relevant time; and also must have consented or connived for the commission of offence or any negligence is attributable on their part as Directors which resulted in commission of the offence by the Company. This is clearly lacking in the present case. In other words, the material facts to indicate the complicity of the Petitioners in the commission of the alleged offence by the Accused Company is not spelt out in the complaint as filed. Mere reproduction of the language of the section in the complaint cannot be the basis to proceed in the matter.

06. Accordingly, assuming that the action could continue against the Petitioners, in the complaint as filed, except the assertion that the accused are Directors of the accused Company, there is no assertion or allegation as to how the Petitioners who were the Directors were in charge

of the affairs of the Company or looking after the day to day work of the Company at the relevant time and that the offence was committed with their consent or connivance or is attributable to any neglect on their part being Directors of the Company, which was the cause for the commission of the alleged offence. Viewed in this perspective, the decisions pressed into service on behalf of the complainant, Respondent No. 1, are of no avail.

07. Accordingly, this petition succeeds. Criminal action, namely, C.C. No. 2323/S/99, pending in the lower Court is quashed only to the extent of the Petitioners, accused Nos. 7 and 8. Rule made absolute on the above terms.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR, J.)